



## MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen  
*Chair*

Kenita V. Barrow  
*Vice Chair*

**July 25, 2017**

### **Waiver 17-07-011**

On July 14, 2017, the Ethics Commission received a request from the Department of Health and Human Services (DHHS) for a class waiver for Public Health Services, School Health Services Nurses and Technicians of the prohibition of 19A-12(b) of the Public Ethics Law on outside employment with an entity that contracts with the employee's County department. The Ethics Commission grants the waiver request, subject to certain conditions that are detailed below.

School Health Nurses and School Health Room Technicians are typically 10 month employees who often seek to supplement their incomes through summer jobs when school is not in session. This outside employment is almost universally unrelated to these employees' positions at the schools. Because of the substantial number of contracts and grants between DHHS and various hospitals and health care organizations that do business in Montgomery County, these employees are frequently confronted with the prohibition contained in the County Code at 19A-12(b) on outside employment with an organization that contracts with the employee's department.

There are a substantial number of employees (approximately 410 as of this request date) who fall in the class of persons for whom this waiver is sought. The restriction in 19A-12(b) causes a burden on these employees as it prohibits them from working with many health care providers in the County, unless they seek an individual waiver. The DHHS has found it administratively burdensome to process the waiver requests as the employees involved require substantial assistance in understanding the requirements for a waiver, applying those requirements to their particular situations, and preparing the needed waiver materials.

School Health Nurses [job class 002306: \*Comm Health Nurse II] work with students enrolled in the Montgomery County Public School (MCPS) system and provide services involving: health assessment; administration of immunizations and other medications under standing orders from the Public Health Officer; managing the needs of special populations within the school such as pregnant teens or children with chronic health conditions; collaboratively working with schools' administrative staff, teachers, and other school resources; creating individualized health care plans; problem solving; skills training and oversight of health room technicians; monthly reports; and staff delegation and evaluations. Most School Community Health Nurses work on the school calendar, which is approximately 38 weeks of the year.

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School Health Room Technicians [job classes 202702: School Health Room Technicians I and 202701: School Health Room Technician II] provide frontline school health room care to include first aid, emergency care, and administration of medications and treatments in routine and non-routine situations to students and staff at assigned schools within the MCPS system. The main population served is school children within MCPS. School Health Room Technicians work on the school calendar, which is approximately 38 weeks of the year.

19A-8(b) of the County's Public Ethics Law provides the Commission may waive the prohibitions of subsection 19A-12(b) if it finds that the "proposed employment is not likely to create an actual conflict of interest." The school nurse and technician positions are focused internally on school populations and are not naturally prone to conflicts of interest as the work has minimal impact on persons and entities outside the school population. Moreover, given the partial-year obligation associated with these positions, it is natural that these employees would seek outside employment in their chosen field, health care, during the period school is in summer recess. Given the volume of the requests, the relative burden on the employees, DHHS, and the Commission in the processing of the waivers, and the absence of significant concerns of conflicts of interest, the Commission believes a class waiver is warranted as the outside employment of the school nurses and technicians is not likely to create an actual conflict of interest.

There are limitations on the scope of this waiver. The waiver does not apply in the following circumstances: where the outside employer is directly affected by the County employee in the performance of County duties; where the employee's position with the outside employer is funded by the Department through a contract or other vehicle; or where the work being performed by the employee in the outside position would involve the employee's making representations on behalf of the outside employer to the Department. Under these circumstances, employees would need to use the processes outlined in 19A-8(b) to request an individual waiver from the Ethics Commission. In addition, employees in conducting official duties may not refer any person to the employee's outside employer for services. (This condition is not applicable where a person is referred by the employee to the nearest local hospital, and the local hospital is the outside employer.) Also, while working with the outside employer, no services can be provided to a person that the employee has served while conducting official duties. (This condition is not applicable when a local hospital is the outside employer.)

With the limitations on the requested class waiver in place, nothing these employees would be doing in their official roles would involve or affect their outside employers, and nothing they would be doing in their outside jobs would relate to or involve their County position or Departmental funds. Accordingly, pursuant to this waiver, School Community Health Nurses and School Health Room Technicians can engage in outside employment with entities that contract with the Department notwithstanding the prohibition in 19A-12(b), as long as the conditions of this waiver are complied with.

This waiver does not negate the requirement for employees to submit requests for outside employment under 19A-12(a) of the Public Ethics law. The Commission notes that while the burden of compliance with the conditions specified in this waiver falls upon employees that avail themselves of the waiver, DHHS and the Commission should be able to provide some assistance to affected employees through the review process for outside employment approvals.

For the Commission:



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Steven Rosen, Chair